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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/879,017	06/12/2001	Nabil Elshourbagy	GP70707	3399
26130	7590	04/27/2004	EXAMINER	
RATNER & PRESTIA- SB DIVISION			GUCKER, STEPHEN	
ONE WESTLAKES			ART UNIT	
SUITE 301			PAPER NUMBER	
BERWYN, PA 19482			1647	

DATE MAILED: 04/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/879,017

**Applicant(s)**

ELSHOURBAGY ET AL.

**Examiner**

Stephen Gucker

**Art Unit**

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

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***Election/Restrictions***

1. The Restriction to one of the following inventions is required under 35 U.S.C.

121:

I. Claims 1-5 and 9-11 drawn to isolated polynucleotides, vectors, host cells, and methods of making a polypeptide, classified in classes 435 and 536, and subclasses 69.1, 320.1, and 325 for class 435 and subclass 23.5 for class 536.

II. Claims 6-8 and 12, drawn to an isolated polypeptide and a cell membrane expressing that polypeptide, classified in classes 514 and 530, and subclass 12 for class 514, and subclass 350 for class 530. The inventions are distinct, each from the other because of the following reasons:

2. Although there are no provisions under the section for "Related Inventions" in M.P.E.P. 806.05 for "inventive groups that are directed to different products; restriction is deemed to be proper because these products appear to constitute patentably distinct inventions for the following reasons:

Groups I and II are directed to products that are distinct both physically and functionally, and are therefore patentably distinct, and are not required one for the other. Further, the nucleic acid of Group I can be used other than to make the protein of Group II, such as its use in gene therapy. The protein of Group II can be used as a probe for ligands to the receptor, which the nucleic acids of Group I cannot be used for.

3. Because these inventions are distinct for the reasons given above, and because the search and examination of these groups are different because they involve separate

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searches in separate databases in both the patent and non-patent literature, restriction for examination purposes as indicated is proper because the search and examination of these groups is different and would pose an undue burden to the examiner.

4. A telephone call was made to Robert L. Andersen's office on 4/23/04 to request an oral election to the above restriction requirement, but did not result in an election being made.

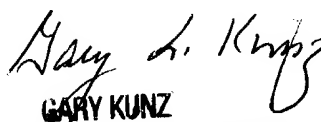
5. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technical Center 1600 general number which is (571) 272-1600.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (571) 272-0883. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached at (571) 272-0887. The fax phone number for this Group is currently (703) 872-9306.

SG

Stephen Gucker

April 23, 2004

  
GARY KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600